

June 10, 1937

Columbus R. Hall, Roxanna D. Hall
c/o Mrs. A. J. Denny
Green River, Utah
Hanksville, Utah

Dear Madam:

REL: BOUL CREEK DISTRIBUTION AND
APPLICATIONS NOS. 6939 AND 9062

I am in receipt of your letter of June 2, setting forth the fact that the waters of Boul creek have failed to reach the point of diversion designated in Mr. and Mrs. Hall's Application Nos. 6939 and 9062 since Mr. Pace is conveying all the water of said creek into his canal. You ask if it would be possible for the Commissioner of the Fremont river to come down and take charge of Boul creek for the purpose of making a division of the water among the persons entitled thereto.

In reply, I wish to review the situation as I see it. April 29, 1937, I received a letter from you, requesting the appointment of a Water Commissioner on said stream, following which I answered by outlining, pretty much in detail, how a Commissioner could and would be appointed. I did not hear further from you, nor from other water users on Boul creek, until May 23 when Mr. Jerman, of this office, returned from Hanksville and reported that on the morning of May 22, he was on Boul creek and found you had commenced the plowing of a ditch for the purpose of diverting water from said creek for the irrigation of virgin land, and in discussing, with you, the possibilities of irrigating said land, he understood the water was to be diverted onto the land in order that same could be plowed before the planting of crops this season.

From a study of the files of this office, pertaining to the flow of the waters of Boul creek, one would conclude that it is impossible to water a crop, not yet planted, with the water that may be available after this date, and I was very much interested to see what the chances were for such an undertaking this season. Therefore, on the morning of May 28, while at Hanksville with Mr. Jerman, I had him take me to your point of diversion in order that I might examine your irrigation works, the land that had been irri-

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6/10/37

Gated and the use you were making of the water, etc. To say the most, it is hard for me to understand how you can, at this time, claim a right to and expect to make beneficial use of water on land which, I am sure, has not been irrigated for more than six years and upon which there is still growing a native vegetation that must be broken before crops can be planted. On the morning of my visit, the water of the creek was being diverted, therefore, by a poorly constructed earth dam, conveyed a short distance in a ditch not much larger than a plow furrow and allowed to waste down through the brush. Most of this water was following an old road approximately one mile and it had reached to within a short distance of the old log house standing near the Hanksville-Pace ranch road. There was no sign which would lead one to believe this water was being used for the irrigation of any particular tract of land but it would appear that the diversion was made more for the purpose of taking control of the water than putting the water to beneficial use.

I must state, after an examination of the project, I definitely concluded I would not appoint a Water Commissioner for the division of the waters of said creek between the Hall interest and the other users therefrom. In all my years of experience in irrigation work, the most outstanding evidence of loss of a water right by nonuse or abandonment, which has come to my attention, is that which you have on Boul creek.

In defending this conclusion of loss by abandonment, or nonuse, I would expect you to say you haven't used said water because it hasn't been available at your point of diversion. However, I am sure you can not stand on this ground since the evidence will show where large volumes of water have flowed past your point of diversion into and through the town of Hanksville, as evidenced by large volumes of sand being washed into the lots and streets thereof, and again by a large north and south channel which has been washed down one of the east streets of this town, and you have not, during the time that this water has been flowing here, attempted to or been in a position to divert and use any part of the water upon your lands.

I note, from the records in this office, Certificate Nos. 2223 and 2224 were issued showing evidence of a water right from said creek as a result of Application Nos. 6939 and 9063. These Certificates, you understand, were issued

Columbus R. Hall,
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6/10/37

-3-

upon evidence in the form of proofs submitted to this office several years prior to the issuing thereof, and these were sworn to by two disinterested witnesses as required by law.

Again, although the rights initiated, as a result of said Applications and proofs pertaining thereto, submitted prior to 1930, together with the Certificates issued as late as 1936, were once valid rights, I am sure no Court of equity would, at this time, hold them as being now in good standing. Therefore, I do not feel obligated, by law or otherwise, to authorize a Commissioner to distribute the water of Boul creek. If you feel aggrieved by this decision, you may take an appeal, therefrom, to the District Court for a plenary review thereof, as provided by Section 100-3-14 Revised Statutes of Utah, as amended by Session Laws of 1937.

Yours very truly,

T. H. Humpherys
STATE ENGINEER

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